

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LINDA McGARR,

Plaintiff,

-against-

**ANSWER TO FIRST  
AMENDED COMPLAINT**

07 Civ. 9488 (KMK)

CITY OF PEEKSKILL, WESTCHESTER COUNTY,  
DAVID LEVINE, THOMAS McINTYRE,  
WALTER BROVARSKI, EUGENE TUMOLO,  
JOHN and JANE DOE, SUPERVISORS,  
DANIEL STEPHENS, GEORGE BOLEN,  
LOUIS ROH and MILLARD HYLAND,

JURY TRIAL DEMANDED

Defendants.

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Defendants, Westchester County, Louis Roh and Millard Hyland, by their attorneys, Oxman Tulis Kirkpatrick Whyatt & Geiger, LLP, of counsel to Westchester County Attorney Charlene Indelicato, as and for their Answer to plaintiff's First Amended Complaint, state as follows:

1. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "1".
2. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "2", except admit that the victim identified in the complaint by the initials A.C. was murdered and raped.
3. Defendants deny the allegations contained in paragraph "3".
4. Defendants deny knowledge or information sufficient to form a belief as to the

allegations contained in paragraph "4", except admit that Steven Cunningham pled guilty to the rape and murder of A.C. and that at the time of his guilty plea, Cunningham was in prison for murder.

5. Defendants deny the allegations contained in paragraph "5".
6. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "6".
7. Defendants deny the allegations contained in paragraph "7".
8. Defendants deny the allegations contained in paragraph "8".
9. Defendants deny the allegations contained in paragraph "9", except admit that the plaintiff Linda McGarr is Jeffrey Deskovic's mother.

#### **JURISDICTION**

10. Defendants admit the allegations contained in paragraph "10".

#### **VENUE**

11. Defendants admit the allegations contained in paragraph "11".

#### **JURY DEMAND**

12. Defendants neither admit nor deny the allegations contained in paragraph "12" as plaintiff is requesting a jury trial.

**PARTIES**

13. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "13".
14. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained "14".
15. Defendants deny the allegations contained in paragraph "15", except admit that Westchester County is a political subdivision of the State of New York, was the employer of defendants Bolen and Roh, is the employer of defendant Hyland, and respectfully refers all questions of law to this Court for resolution.
16. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "16".
17. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "17".
18. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "18".
19. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "19".
20. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "20".
21. Defendants deny knowledge or information sufficient to form a belief as to the

allegations contained in paragraph "21".

22. Defendants admit the allegations contained in paragraph "22" to the extent that at all relevant times defendant George Bolen was employed by Westchester County as an Assistant District Attorney.
23. Defendants admit the allegations contained in paragraph "23" to the extent that at all relevant times defendant Louis Roh was employed by Westchester County in the Department of Laboratories and Research as a Deputy Medical Examiner.
24. Defendants admit the allegations contained in paragraph "24" to the extent that at all relevant times defendant Millard Hyland was employed by defendant County of Westchester in the Department of Laboratories and Research, as Pathologist/Medical Examiner.

**FACTS**  
**THE CRIME AND INITIAL INVESTIGATION**

25. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "25".
26. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "26".
27. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "27".
28. Defendants admit the allegations contained in paragraph "28".

29. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "29", except admit that representatives from the Westchester County District Attorney's office responded to Hillcrest Park after A.C.'s body was found.
30. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "30", except admit that members of the Peekskill Police Department collected evidence.
31. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "31".
32. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "32".
33. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "33".
34. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "34".
35. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "35", except admit that Steven Cunningham pled guilty to the crimes involving A.C.
36. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "36".

- 37. Defendants admit the allegations contained in paragraph “37”.
- 38. Defendants admit the allegations contained in paragraph “38”.

**PEEKSKILL POLICE FOCUS ON  
PEEKSKILL HIGH SCHOOL FOR SUSPECTS**

- 39. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph “39”.
- 40. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph “40”.
- 41. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph “41”.
- 42. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph “42”.
- 43. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph “43”.
- 44. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph “44”.

**THE PPD DEFENDANTS CONCEAL MATERIAL,  
EXCULPATORY AND IMPEACHMENT EVIDENCE**

45. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "45".
46. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "46".
47. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "47".
48. Defendants deny the allegations contained in paragraph "48".

**THE INVESTIGATION FOCUSES ON JEFFREY DESKOVIC**

49. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "49", except admit that in November, 1989 the plaintiff was sixteen years old and he attended Peekskill High School.
50. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "50".
51. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "51".
52. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "52".
53. Defendants deny knowledge or information sufficient to form a belief as to the

allegations contained in paragraph "53".

**PPD INVESTIGATORS EXPLOIT JEFFREY'S  
EMOTIONAL AND PSYCHOLOGICAL VULNERABILITIES**

54. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "54".
55. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "55".
56. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "56".
57. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "57".
58. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "58".
59. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "59".
60. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "60".
61. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "61", except admit that former Assistant District Attorney Robert Neary was present at the Peekskill Police Department Headquarters



on December 12, 1989 and that ADA Neary requested that a representative of the Peekskill Police Department ascertain if Jeffrey Deskovic would consent to a polygraph examination.

62. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "62", except admit that Assistant District Attorney George Bolen was the Deputy Division Chief Superior Court Trial Division and was the trial attorney for the prosecution in the case brought against Jeffrey Deskovic..
63. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "63".
64. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "64".
65. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "65".
66. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "66".
67. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "67".
68. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "68".
69. Defendants deny knowledge or information sufficient to form a belief as to the

allegations contained in paragraph "69".

**JEFFREY OBTAINS LEGAL COUNSEL -  
WHICH THE DEFENDANTS DISREGARD**

70. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "70".
71. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "71".
72. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "72".
73. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "73".
74. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "74".
75. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "75".
76. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "76".
77. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "77".

**PPD DEFENDANTS CONCEAL THEIR FIFTH AMENDMENT VIOLATIONS**

78. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "78".
79. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "79", and respectfully refer all questions of law to this Court for resolution.
80. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "80".
81. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "81".

**THE POLICE QUESTION JEFFREY AND  
FABRICATE ADDITIONAL EVIDENCE OF GUILT**

82. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "82".
83. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "83".
84. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "84".
85. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "85", except admit that maps/drawings signed by

the plaintiff were provided to the Westchester County District Attorney's office.

**THE POLICE PLAN TO PROCURE JEFFREY'S CONFESSION**

86. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "86".
87. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "87".
88. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "88", except admit that a polygraph examination of plaintiff Jeffrey Deskovic was conducted by defendant Daniel Stephens in Brewster, New York on January 25, 1990.
89. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "89".
90. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "90", except admit that no personnel from Westchester County District Attorney's Office were present at the polygraph examination conducted on January 25, 1990.

**THE COERCED "CONFESSION"**

91. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "91", except admit that the plaintiff participated in a polygraph examination on January 25, 1990.
92. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "92".
93. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "93".
94. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "94".
95. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "95".
96. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "96".
97. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "97", except admit that defendant Stephens obtained plaintiff's signature on documents in preparation for the polygraph examination.
98. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "98", except admit that the polygraph examination

was administered by defendant Stephens.

99. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "99".
100. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "100".
101. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "101".
102. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "102".
103. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "103".
104. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "104".
105. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "105".
106. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "106", except admit that plaintiff was placed under arrest and transported to the Peekskill Police Department.
107. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "107".

108. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "108".

109. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "109".

**POLICE COERCED, FABRICATED, AND  
CONCEALED EXCULPATORY EVIDENCE  
CONCERNING ADDITIONAL INVESTIGATION  
OF JEFFREY DESKOVIC**

110. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "110".

111. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "111".

112. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "112".

**JEFFREY'S INDICTMENT IS PROCURED  
WITH FABRICATIONS AND CONCEALMENT  
OF MATERIAL, EXCULPATORY  
AND IMPEACHMENT EVIDENCE**

113. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "113", except admit that the plaintiff consented to have his blood drawn and that the plaintiff's blood sample, along with samples taken from victim A.C. were sent to the FBI Laboratory for testing.

- 114. Defendants deny the allegations contained in paragraph "114", except admit that presentation was made to the Grand Jury before DNA results were received.
- 115. Defendants deny the allegations contained in paragraph "115", except admit that the February, 1990 Grand Jury noted to indict the plaintiff on February 1, 1990, the indictment was handed up to County Court Judge Lange on February 27, 1990, the plaintiff was released on bail, and for some of the time between indictment and trial, the plaintiff was in psychiatric facilities.
- 116. Defendants deny the allegations contained in paragraph "116".

**DNA EVIDENCE EXONERATES JEFFREY -  
BUT THE PROSECUTION CONTINUES**

- 117. Defendants deny the allegations contained in paragraph "117", except admit that correspondence was received from the FBI Laboratory excluding the plaintiff as the source of the semen found on the vaginal swab taken from the victim. Upon information and belief, Assistant District Attorney George Bolen and other representatives of the District Attorney's office were notified of the results from the FBI Laboratory.
- 118. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "118".
- 119. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "119".



- 120. Defendants deny the allegations contained in paragraph "120".
- 121. Defendants deny the allegations contained in paragraph "121".
- 122. Defendants deny the allegations contained in paragraph "122".
- 123. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "123".
- 124. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "124".
- 125. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "125".
- 126. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "126".

**PROSECUTORIAL AND POLICE MISCONDUCT  
DEPRIVE JEFFREY OF A FAIR TRIAL**

- 127. Defendants deny the allegations contained in paragraph "127".
- 128. Defendants deny the allegations contained in paragraph "128".
- 129. Defendants deny the allegations contained in paragraph "129".
- 130. Defendants deny the allegations contained in paragraph "130".
- 131. Defendants deny the allegations contained in paragraph "131".
- 132. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "132".

133. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "133" and respectfully refer the Court to the trial transcript.
134. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "134".

**MR. DESKOVIC'S INCARCERATION  
AND EFFORTS TO PROVE HIS INNOCENCE**

135. Defendants admit the allegations contained in paragraph "135".
136. Defendants deny the allegations contained in paragraph "136", except admit that plaintiff filed both direct appeals regarding his criminal conviction, as well petitions in Federal Court to obtain his release.
137. Defendants admit the allegations contained in paragraph "137".
138. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "138", except admit that the plaintiff filed a petition for a writ of habeas corpus which was denied by United States District Court Judge Barbara Jones. Judge Jones' determination was affirmed by the United States Court of Appeals for the Second Circuit and plaintiff's petition for certiorari was denied by the Supreme Court of the United States.

**THE REAL KILLER IS IDENTIFIED AND JEFFREY IS EXONERATED**

139. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "139", except admit that Westchester County District Attorney Janet DiFiore consented to conduct STR DNA testing on the semen found on the vaginal swab taken from the victim and to run the results of that testing against the available DNA data bases for convicted offenders.
140. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "140", except admit that the DNA was matched to Steven Cunningham who subsequently pled guilty to crimes involving the victim and was sentenced.
141. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "141".
142. Defendants admit the allegations contained in paragraph "142".
143. Defendants admit the allegations contained in paragraph "143".

**POLICIES AND CUSTOMS OF THE PPD,  
THE WESTCHESTER COUNTY DISTRICT  
ATTORNEY'S OFFICE AND THE WESTCHESTER  
COUNTY MEDICAL EXAMINER'S OFFICE**

144. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "144".
145. Defendants deny knowledge or information sufficient to form a belief as to the

allegations contained in paragraph "145".

146. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "146".

147. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "147".

148. Defendants deny the allegations contained in paragraph "148".

149. Defendants deny the allegations contained in paragraph "149".

150. Defendants deny the allegations contained in paragraph "150".

151. Defendants deny the allegations contained in paragraph "151".

152. Defendants deny the allegations contained in paragraph "152".

153. Defendants deny the allegations contained in paragraph "153".

154. Defendants deny the allegations contained in paragraph "154".

155. Defendants deny the allegations contained in paragraph "155".

156. Defendants deny the allegations contained in paragraph "156".

157. Defendants deny the allegations contained in paragraph "157".

### **DAMAGES**

158. Defendants deny the allegations contained in paragraph "158".

159. Defendants deny the allegations contained in paragraph "159".

160. Defendants deny the allegations contained in paragraph "160".

161. Defendants deny the allegations contained in paragraph "161".

**COUNT I**

**42 U.S.C. § 1983 FIRST AMENDMENT AND  
FOURTEENTH AMENDMENT DUE PROCESS  
CLAUSE-RIGHT TO FAMILIAL ASSOCIATION  
AGAINST ALL DEFENDANTS**

162. Defendants repeat, reiterate and reallage each and every admission and/or denial as if more fully set forth herein in response to paragraph "162".

163. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "163" and respectfully refer all questions of law to this Court for resolution.

164. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "164" and respectfully refer all questions of law to this court for resolution.

165. Defendants deny knowledge of information sufficient to form a belief as to the allegations contained in paragraph "165" and respectfully refer all questions of law to this court for resolution.

166. Defendants deny the allegations contained in paragraph "166" with regard to defendants County of Westchester, Bolen, Roh and Hyland. Defendants deny knowledge or information sufficient to form a belief with regard to the other defendants.

167. Defendants deny the allegations contained in paragraph "167" with regard to defendants County of Westchester, Bolen, Roh and Hyland. Defendants deny knowledge or information sufficient to form a belief with regard to the other defendants.
168. Defendants deny the allegations contained in paragraph "168" with regard to defendants County of Westchester, Bolen, Roh and Hyland. Defendants deny knowledge or information sufficient to form a belief with regard to the other defendants.
169. Defendants deny the allegations contained in paragraph "169" with regard to defendants County of Westchester, Bolen, Roh and Hyland. Defendants deny knowledge or information sufficient to form a belief with regard to the other defendants.
170. Defendants deny the allegations contained in paragraph "170" with regard to defendants County of Westchester, Bolen, Roh and Hyland. Defendants deny knowledge or information sufficient to form a belief with regard to the other defendants.
171. Defendants deny the allegations contained in paragraph "171" with regard to defendants County of Westchester, Bolen, Roh and Hyland. Defendants deny knowledge or information sufficient to form a belief with regard to the other defendants.

172. Defendants deny the allegations contained in paragraph "172" with regard to defendants County of Westchester, Bolen, Roh and Hyland. Defendants deny knowledge or information sufficient to form a belief with regard to the other defendants.
173. Defendants deny the allegations contained in paragraph "173" with regard to defendants County of Westchester, Bolen, Roh and Hyland. Defendants deny knowledge or information sufficient to form a belief with regard to the other defendants.
174. Defendants deny the allegations contained in paragraph "174" with regard to defendant Bolen. Defendants deny knowledge or information sufficient to form a belief as to the other named defendants.
175. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "175".
176. Defendants deny the allegations contained in paragraph "176".
177. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "177".
178. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "178".
179. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "179".

180. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "180".
181. Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "181".
182. Defendants deny the allegations contained in paragraph "182".
183. Defendants deny the allegations contained in paragraph "183".
184. Defendants deny the allegations contained in paragraph "184".
185. Defendants deny the allegations contained in paragraph "185".
186. Defendants deny the allegations contained in paragraph "186".
187. Defendants deny the allegations contained in paragraph "187".
188. Defendants deny the allegations contained in paragraph "188".
189. Defendants deny the allegations contained in paragraph "189".
190. Defendants deny the allegations contained in paragraph "190".
191. Defendants deny the allegations contained in paragraph "191".

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

192. Plaintiff's complaint should be dismissed as defendant Roh is entitled to absolute immunity.



**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

193. The defendants are entitled to dismissal of plaintiff's complaint as the actions undertaken by representatives of the Westchester County District Attorney's office are protected by absolute immunity.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE.**

194. The plaintiff's cause of action fails to state a claim upon which relief may be granted.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

195. The complaint fails to set forth a basis upon which an award of punitive damages may be based.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

196. Plaintiff's claim against Westchester County pursuant to 42 U.S.C. § 1983 should be dismissed as the plaintiff has failed to provide appropriate facts to support the claim that the defendant failed to supervise, train, and discipline Assistant District Attorneys as well as representatives of the Westchester County Medical Examiner's office.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

197. The individual defendants are entitled to qualified immunity.

**AS AND FOR AN SEVENTH AFFIRMATIVE DEFENSE**

198. To the extent that plaintiff asserts claims against the Westchester County District Attorney's office, those claims are barred by the Eleventh Amendment Doctrine of Sovereign Immunity.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

199. Plaintiff's claims are barred in whole or in part by applicable statute of limitations.

**AS AND FOR AN TENTH AFFIRMATIVE DEFENSE**

200. Plaintiff's damages resulted from actions of third parties over whom the answering defendants have no authority.

**AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE**

201. Plaintiff was not damaged as a result of any policy, practice, custom or procedure of Westchester County.

**WHEREFORE**, it is respectfully requested that the plaintiff's first amended complaint be dismissed in its entirety and that the answering defendants be awarded judgment in their favor, together with such other and further relief as this court deems just and proper.

Dated: White Plains, New York  
July 8, 2008



Stuart E. Kahan (SK-7767)

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